IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 17777 of 2003

Between:

M/s Shathabdi Granties (P) Ltd.,

rep.by its Director Sri Omprakash Marda
s/o Late Bhavarlal Marda.

..... PETITIONER

AND

1.The Government of Andhra Pradesh rep.by its Secretary,
Industries & Commerce Dept., Secretariat.,
Hyderabad.

2.The Government of Andhra Pradesh

rep.by its Secretary,

Revenue Department, Secretariat.,
Hyderabad.

3.The District Collector, Warangal.

4.The Director, Mines & Geology, B.R.K.R.Buildings, 8th Floor, Tank Bund Road, Hyderabad.

5.The Mandal Revenue Officer, Kesamudram, Warangal District.

6.The District Superintendent of Police, Mahaboobabad, Warangal District.

7.The Sub-Inspector of Police, Kesamudram Police Station, Kesamudram, Warangal District.

8.J.Mahender Reddy s/o Late Manmohan Reddy r/o Mandal Parishad Development Office,
Mahaboobabad, Warangal District.

9.Kankala Iylaiah son of Beeraiah, age 32 yrs,agriculture

10.Panjala Gopal son of Sailu, age 52 yrs, agriculture

11.P.Mallaiah son of Veeraiah, age 48 yrs agriculture r/o Penugonda village, Kesamudram mandal, Warangal district.

12.Bhukya Vachya son of Gopya, age 60 yrs agriculture, resident of Vachya Thanda

13.Ajmeera Anjari son of Chakru age 55 yrs, agriculture, resident of Narsimhulagudem, Penugonda village, Kesamudram mandal.

(R9 to R13 are impleaded as per Court order dated 28-10-2003 in W.P.M.P.No.23945 of 2003.)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order one in the nature of Writ of Mandamus, declaring the action of the respondents in not taking action against encroachments and stopping the encroachments into the Government land in Sy.No.519/1 of Penugonda Village, Kesamudram Mandal, Warangal District and not providing protection to the petitioner for quarrying and transportation of granite from the leased area in Sy.No.519/1 of Penugonda Village, Kesamudram mandal, Warangal District which is also is Government land as arbitrary, illegal, unjust and unconstitutional and consequently direct the respondents accordingly to provide protection to the petitioner and stop the encroachments in the Government land

Counsel for the Petitioner: MR.C.RAMESH SAGAR

Counsel for the Respondents 1 and 4: GP FOR INDUSTRIES
Counsel for the Respondent Nos.2, 3 AND 5: G.P. FOR REVENUE
Counsel for the Respondent Nos.6 and 7: G.P. FOR HOME
Counsel for the Respondent No.8: MR.S.RAVI
Counsel for the Respondent Nos.9 to 13: MR.DHANANJAYA REDDY

The Court made the following:

ORDER

Heard Mr.C.Ramesh Sagar, the learned counsel for the petitioner, the learned Government Pleader appearing on behalf of the respondents 1 to 7 and Mr.S.Ravi, learned counsel appearing on behalf of the respondent No.8.

The petitioner herein,who claims to be the lease holder in respect of Survey No.519/1 situated at Penugonda village, Kesamudram mandal in Warangal District files this Writ Petition *inter alia* seeking for Writ of Mandamus declaring the action of the respondents in not taking action against the encroachments made by the contesting respondents herein and not providing protection for quarry and transportation of granite from the said leased area as illegal.

The case of the petitioner in brief is that in pursuance of the application made by him on 21-12-2000 along with M/s Bansal Granites, for grant of quarry lease to an extent of Ac.5.00 in Survey No.519/1 situated at Penugonda village, Kesamudram mandal in Warangal District, a survey was conducted on 9-1-2001 after following the due procedure and also in pursuance of the no objection certificate issued by the Mandal Revenue Officer on 7-2-2001, the lease was granted to both the applicants on 7-1-2002 by the Assistant Director of Mines and consequently the work orders have been issue for the period of two years from 7-1-2002 to 6-1-2004. However, the 8th respondent herein who claims to be the owner of the neighbouring land in Survey No.70 ad-measuring Ac.33.22 guntas and who has been granted quarry in the said survey number, made a false complaint that the petitioner is in fact operating in the said survey number belonging to him by making an encroachment. As per the survey conducted by the Assistant Director of Survey and Land Records in terms of

the request made by the concerned Mandal Revenue Officer and in pursuance of the proceedings, dated 19-6-2003, a direction was issued to stop the execution of work. Thereupon the petitioner has filed a Writ Petition in W.P.No.11972 of 2003 which was disposed of on 30-6-2003 directing to furnish a report and for permission to conduct the operations by the petitioner in the land in Survey No.519/1. Subsequently in pursuance of the survey conducted on 28-6-2003, a report was filed on 11-7-2003 earmarking the boundaries after proper demarcation and with a finding that the petitioner is carrying on the operation only in Survey No.519/1. Having thus failed in attempt, the 8th respondent once again started interfering with the petitioner's quarry operations which has led to filing of a complaint to the police on 8-7-2000 and in spite of the same, no action was taken by the Revenue authorities or by the Mining authorities. Though the petitioner was granted the transport permits in Form-L by the Assistant Director of Mines, but, however, at the instance of the 8th respondent certain claims have come up from third parties and as a result, the petitioner had to pay a sum of Rs.40,000/- as compensation. In spite of that the 8th respondent continued to cause obstruction in regard to the quarrying and transporting the material. The petitioner was also threatened and again complaint has been filed with the police. Apart from representation made to the District Collector on
19-8-2003 and to the Revenue Divisional Officer on the same day, no action has been taken. Therefore, the petitioner legitimate rights were obstructed without any cause and no action has been taken by the authorities concerned. Hence the Writ Petition.

In the counter affidavit filed on behalf of the respondents herein, the allegation made against them are denied. However, having regard to the local disputes and the objections raised by the villagers regarding passage etc., no action could be taken and however reiterating that the petitioner is carrying operations only in Survey No.519/1.

On behalf of the 8th respondent through counter affidavit filed, it is his case that the petitioner is in fact encroaching in neighbouring land belonging to him and in spite of his restriction, the petitioner has encroached over the land in S.No.70 belonging to him for which he has no right. Hence the Writ Petition is liable to be dismissed.

Initially this Court granted interim direction in favour of the petitioner against which

the 8th respondent filed an appeal before the Division Bench in W.A.No.307 of 2004 wherein the Division Bench of this Court by taking note of the complaints as made against each other in respect of both survey numbers in 70 and 519/1, modified the interim order with a direction that the survey of the land comprised in Survey Nos. 70 and 519/1 of the village be conducted in accordance with law by the Regional Deputy Director of Survey & Land Records after giving notice to the appellant as well as the 8th respondent within a period of six weeks. Further it was held that it shall be open for the appellant and 8th respondent to produce necessary records before the 9th respondent who will conduct survey and in case appellant or 8th respondent is aggrieved, they will be at liberty to avail their remedy in accordance with law. The matter had once again come up before the Division Bench in W.A.No.491 of 2004 as against the interim direction granted and as per the orders dated 11-3-2004, the Division Bench reiterating the orders passed earlier in W.A.No.307 of 2004 further directed that the Joint Survey will be conducted on or before 31-3-2004 after notice to concerned parties and a copy of the report of the said survey will be placed in the Writ Petition. In view of the aforesaid directions of the Division Bench, a survey was conducted and a report has been submitted to this Court as per the proceedings in Rc.No.A5/2032/03,dated 29-3-2004 from the Regional Deputy Director of Survey and Land Records, Narayanguda, Hyderabad, wherein it was found that the common boundary between Survey Nos. 70 and 519/1of Penugonda village is passing through the lower South west corner of presently mining operation area conducted by the petitioner herein. Approximately 3 guntas of said land is falling in S.No.70 and the rest i.e.27 guntas in S.No.519.

The learned counsel for the petitioner herein complained that the joint survey is not conducted in terms of the directions given by the Division Bench and therefore, the said report is not a proper and valid and cannot be acted upon.

Contesting the claim, the contention urged on behalf of the respondents is that the survey as conducted is perfectly in terms of the directions given earlier and there was no question of any joint survey, but it is only a survey in regard to the land comprised in both survey numbers.

Considering the submissions made and on perusal of the material, the main dispute between the parties appears to be *prima facie,* a complaint and counter complaint against each other by the petitioner and as well as the 8th respondent herein for

encroaching over the other lands. There is no dispute with regard to the fact that the petitioner is holding a lease in S.No.519/1 whereas the 8th respondent claims to be the owner of Survey No.70. Neither the petitioner has got any right in or around the land in S.No.519/1 or in S.No.70 of the 8th respondent. The land in S.No.519/1 is quite large and its extent is beyond Ac.300.00 of which a portion has been leased out to the petitioner. Apparently on the face of it, the complaint is purely well within the realm of private law and both sides could have as well taken to approach the common law course necessary, instead of seeking any decision in an extraordinary jurisdiction under Article 226 of the Constitution of India. Even now as per the report submitted by the authorities in pursuance of the directions of the Division Bench, the petitioner has encroached to an extent of 3 guntas in survey No.70 which belongs to the 8th respondent though there is no justification for any such action. It is always open for the authorities concerned to take proper action against such encroachment and also for the 8th respondent to avail the remedies under the law. However, the petitioner having thus encroached in the neighbouring land in respect of which, he does not hold any lease nor any right or interest what-so-ever cannot seek any indulgence from this Court under Article 226 of the Constitution of India. Having regard to the finding arrived at, this Court would not venture into the merits of either side nor any relief be given leaving open for both sides to take such appropriate action as per the law. I do not find any merits in this Writ Petition.

The Writ Petition is accordingly dismissed. No costs.

06-12-2004.

Hsd

To

1.The Secretary,Government of Andhra Pradesh,
Industries & Commerce Dept., Secretariat.,
Hyderabad.

2.The Secretary Government of Andhra Pradesh

Revenue Department, Secretariat.,

Hyderabad.

3.The District Collector, Warangal.

4.The Director, Mines & Geology, B.R.K.R.Buildings, 8th Floor, Tank Bund Road, Hyderabad.

5.The Mandal Revenue Officer, Kesamudram, Warangal District.

6.The District Superintendent of Police, Mahaboobabad, Warangal District.

7.The Sub-Inspector of Police, Kesamudram Police Station, Kesamudram, Warangal District.

8.2 C.Csto G.P. for Industries, High Court of A.P. High Court buildings, Hyderabad (OUT)

9. 2 C.Cs to G.P. for Revenue, High Court of A.P. High Court buildings, Hyderabad (OUT)

10.2 C.Cs to G.P. for Home, High Court of A.P. High Court buildings, Hyderabad (OUT)

11. 2 CD copies.